

House Administration Subcommittee on Elections
Testimony of
Chris Nelson, South Dakota Secretary of State
October 23, 2007

Madam Chairwoman and Members of the Committee:

Thank you for the opportunity to offer testimony on the subject of voter registration list maintenance. It is a privilege for me to come before this honorable committee.

Allow me to introduce myself. My name is Chris Nelson. I am the Secretary of State of South Dakota. From 1989 until 2002 I served as the State Election Supervisor for South Dakota. I was elected Secretary of State in 2002. In 2006 I ran for reelection unopposed. One of the reasons I was unopposed is that I have earned a reputation in my state of being able to lead the conduct of elections in a manner that is fair to all parties and independents, open to the fullest participation and instilled with integrity. I serve as the co-chair of the National Association of Secretaries of State Elections Committee.

I think it is vital that you hear the perspective of a state election official who has experience in conducting elections and who understands what works and what doesn't in the area of list maintenance.

The Scope

Successful voter registration list maintenance hinges on a crucial balance between several key areas.

First, the law must clearly define the processes for list maintenance. The policy must define the criteria and requirements that must be met for voter eligibility and ineligibility. It must specify that those no longer eligible to vote such as the deceased or adjudicated as felons or incompetent be removed. The law must also clearly define the removal of voters who have registered to vote in other jurisdictions and those no longer involved in the election process.

Well defined law is the first step to ensuring that voter registration lists are kept clean without the disenfranchisement of voters being improperly removed.

The second balance is in the area of execution of the list maintenance process. Election officials must have the technical ability, resources and training to follow the list maintenance law. This ensures that those names which should be removed are actually taken off the list and that no voter's name is removed which should remain on the list.

For an effective list maintenance process and for the protection of the rights of voters, there is no room for error in either of these areas of balance. Lawmakers must get it right and election officials must perform flawlessly.

Some of these list maintenance procedures are biennial and comprehensive, conducted in the “off” election year. Other procedures are daily or weekly such as the removal of voters who have registered in other jurisdictions, removal of the deceased, removal of duplicate registrations, and removal of those adjudicated as felons or incompetent depending on a state’s policy. I will address both of these types of list maintenance in my testimony.

Biennial List Maintenance

The National Voter Registration Act (NVRA) provided significant restrictions and specific procedures to voter registrars for the conduct of biennial list maintenance.

Why do we refer to list maintenance as biennial? NVRA prohibits comprehensive list maintenance within 90 days of a federal election. That essentially relegates comprehensive list maintenance to the “off” election year, hence biennial. That timeframe works. Election officials conduct this maintenance when they are not crushed with other election conduct responsibilities and in ample time to produce a “clean” voter registration list for the next federal election.

The purpose of biennial list maintenance should be to identify voters who are no longer living at the address in which they are registered or are no longer interested in participating in the election process.

The NVRA allows two options for identifying voters who are no longer living at their registration address.

The first option is to match voter registration names and addresses to the postal service National Change of Address system to identify reported address changes.

The second option is to mail voters a non-forwardable address verification notice. Notices returned undeliverable would indicate a possible address change.

Any voters identified through either of these avenues would then be sent a forwardable double postcard confirmation mailing. If the voter receives the postcard at a new address, the voter can use the card to update their voter registration address. If the card is undeliverable, the voter can be moved to an inactive list for the next four years.

The process sounds perfect. It is easy to run. It allows voters to update their address. It moves voters off the list if they are no longer “findable”. What more could we ask?

Unfortunately it doesn’t work in the real world. This NVRA process is premised on several incorrect assumptions.

Why NVRA List Maintenance Doesn’t Work

The first assumption made in NVRA is that a person who moves will file a change of address notice with the post office which will identify the person when the voter registration list is compared to the NCOA list. Not true.

South Dakota limits our NCOA comparison to voters who have not voted or had any contact with the voter registrar in the last four years. During our 2007 NCOA comparison, only 17.6% of the voters were identified as having filed a postal change of address. This is a very low percentage of voters who can then be sent the forwardable confirmation notice double postcard. It also means that 82.4% of these non-voters must be sent the nonforwardable address verification notice as a backup to NCOA.

The purpose of the nonforwardable address verification mailing is to find out, “Is the voter there?” If the voter is at the address and the notice is delivered, the voter’s name is not removed and no further contact is attempted.

What should we expect with this mailing? If the voter is at the address, the notice is delivered. If the voter is no longer at the address, the notice is returned undeliverable. In reality it doesn’t work that way.

Why does this mailing fail to accomplish the NVRA objective? The success and failure of this mailing is ENTIRELY dependent upon the knowledge of and handling by the postman or postwoman on the delivery route. The postal delivery person must:

1. Know with 100% certainty whether the person still lives at the address on the notice. Postal workers tell me that they do not know with certainty the names of each person who currently resides at each address.
2. Not deliver the notice based on the address without checking the name of the person. Our experience has shown that postal workers “want to deliver” the mail to an address even if the name of the addressee doesn’t match the current resident of the address.
3. Not forward the notice to a new address even though the postal indicia says to not forward. Our experience has shown that postal workers will forward mail which is designated as non-forwardable.
4. Not make the inevitable mistake of simply putting the notice in the wrong mail box. We’ve all had the experience of getting someone else’s mail.

In order for the NVRA prescribed list maintenance process to be effective, NONE of these errors can occur. Real life experience has shown us that they do happen and with great regularity. My office has taken the step of working with our state’s postal leadership to emphasize the importance of following this process perfectly. While the postal service has been very cooperative, unfortunately too many mistakes are still being made at the delivery level.

The NVRA prescribed system places the entire success or failure of biennial list maintenance in the hands of the postal worker.

What is the Result?

When the postal delivery person makes a mistake in any of the four areas outlined above, a name stays on the active voter registration list for another two years. The NVRA prescribed list

maintenance system will fail to remove names which can be legally moved to the inactive list because of the likelihood of postal worker errors. That is a fact and it must be changed.

That same voter will be sent another address verification notice in two years and the cycle repeats itself. The possibility exists of this being a revolving cycle in which the name is never removed.

Statistical Reality

4000 registered voters in South Dakota on the active voter registration list have not voted in at least ten years. That represents 0.8% of all the names on our statewide voter file. In one county, 2.5% of the names on the active list have not voted in at least ten years.

These are counties which have followed the NVRA prescribed list maintenance process but the process has failed to be effective.

If it weren't for our state's photo ID requirement, these names of perpetual non-voters would serve as an invitation for election fraud.

Department of Justice

The Department of Justice has identified South Dakota as one of ten states which have counties with more names on the voter registration list than are in the voting age population. Eight South Dakota counties have greater than 100% registration.

In responding to the DOJ, I have pointed out there are several reasons for this situation one of which is the failure of the NVRA list maintenance system. I predicted in 1993 when NVRA was passed that the methodology for list maintenance would ensure greater than 100% voter registration. It was built into the NVRA language. That prediction has come true and now states are being scrutinized for greater than 100% registration.

The Solution

A solution to the incomplete list maintenance process outlined in NVRA [42 USC § 1973gg-6(b)] is achievable without disenfranchising voters. The NVRA list maintenance process should be supplemented to allow voters on the active voter registration list who have not voted or had any contact with the voter registrar to be moved to the inactive voter registration list after a set number of years. I would suggest six years.

NVRA requires that voters on the inactive list remain on that list for another two general elections. This scenario would allow a name to remain on the voter registration list for ten years of non-voting and no contact before the name would be ultimately removed.

This removal process would serve as a backup to catch any failures in the current postal service oriented list maintenance process. This change would ensure that voters are not prematurely removed from the list but allow election officials to keep their lists reasonably clean.

Daily and Weekly Removal

One of the positive outcomes of the Help America Vote Act (HAVA) was the emphasis on linking the state voter registration database with felon and death record databases. These linkages prevent registration of deceased people or persons under a disqualifying felony conviction. Prior to the HAVA verifications, South Dakota experienced attempts to register deceased persons and had no way of discovering felons registering to vote.

Since implementing the HAVA verification system, no registrations for deceased persons have been received. We have caught about 150 persons with disqualifying felonies who have attempted to register to vote. The system is effective.

The same system can be used to identify persons on the current voter list who die or are convicted of disqualifying felonies. In South Dakota these names are removed on a weekly basis.

In designing our HAVA verification system, the reported problems with felon removal in Florida in the year 2000 were fresh in our minds. We designed a system that would require rigorous verification prior to any voter removal. The tolerance for error is zero.

Our verification system uses a three tiered ranking system for matches based on likelihood of the match being the exact person who has died or been convicted of a felony. The system identifies matches as “perfect”, “probable”, or “possible”. The amount of election official verification required before a name is removed is specified depending upon which of these classifications the match is deemed.

This system has been very effective in properly sorting those names which should be removed from the voter registration list without erroneous removals.

The process for daily and weekly list maintenance is working to maintain the integrity of our voter registration list without disenfranchising voters. I would not recommend any change to this system.

Provisional Ballots

One last thought. The universal requirement for the availability of provisional ballots serves as a safety net to prevent disenfranchisement from erroneous voter removal. It is an effective provision which can be modified within a broad scope by each state to meet the needs of voters in each state.

In South Dakota, my goal is for the number of counted provisional ballots to be zero. Zero provisional ballots would mean that each person coming to the polling place is legally entitled to vote a regular ballot.

We aren't there yet. In the last general election we had 341 provisional ballots in the state. Of those, 90 were countable meaning there were 90 mistakes in the registration list across the state. We will do everything we can to further improve our processes and hopefully drive that number to zero. Despite the importance of provisional ballot availability, we want every legal voter to get a regular ballot, not a provisional ballot.

Final Thought

As this committee examines voter list maintenance procedures, I would encourage adding a provision to federal law allowing states an additional maintenance mechanism to serve as a backup for the current failing NVRA list maintenance process.

I would encourage no change to the current HAVA verification process which is working well to identify the deceased and disqualified felons.

Thank you for your consideration.